

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

EIGHT MILE STYLE, LLC and)	
MARTIN AFFILIATED, LLC,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:19-cv-0736
)	Judge Aleta A. Trauger
SPOTIFY USA INC. and)	
HARRY FOX AGENCY, LLC,)	JURY DEMANDED
)	
Defendants.)	
)	
)	
SPOTIFY USA INC.,)	
)	
Third-Party Plaintiff,)	
)	
v.)	
)	
KOBALT MUSIC PUBLISHING)	
AMERICA, INC.,)	
)	
Third-Party Defendant.)	

**MOTION FOR RECONSIDERATION OF THIS COURT’S AUGUST 15, 2024
MEMORANDUM AND ORDER OR IN THE ALTERNATIVE TO CERTIFY AN
INTERLOCUTORY APPEAL**

Pursuant to Federal Rule of Civil Procedure 54(b), Kobalt Music Publishing America, Inc. (“Kobalt”) respectfully moves this Court for reconsideration of its Memorandum (“Mem.”) and subsequent Order, both dated August 15, 2024 (collectively the “August 15 Order”), denying Kobalt’s Motion for Summary Judgment on Spotify USA Inc.’s (“Spotify’s”) First, Second, and Third Causes of Action in its Third Party Complaint against Kobalt for breach of contract and indemnification under a Mechanical License Agreement between Spotify and Kobalt dated

December 15, 2016 (the “2016 BMLA”) and for anticipatory repudiation thereof, and granting Spotify’s Motion for Summary Judgment on those three claims against Kobalt. In the alternative, Kobalt respectfully requests that the Court certify its permission for Kobalt to seek interlocutory appeal of these rulings pursuant to 28 U.S.C. § 1292(b).

As discussed in the contemporaneously filed Memorandum of Law, Kobalt respectfully submits that there are multiple grounds for reconsideration of the August 15 Order with respect to Spotify’s First, Second and Third Causes of Action, under Federal R. Civ. P. 54(b), to correct clear error and prevent manifest injustice to Kobalt:

1. The 2016 Agreement, read as a whole as it must be, does not support the conclusion in the August 15 Order that Kobalt breached its representation and warranty to Spotify in Paragraph 11.c thereof as a matter of law. Rather, read as a whole, the Agreement supports Kobalt’s summary judgment motion on that issue, particularly in light of this Court’s rulings as to Kobalt’s lack of authority to issue any mechanical license to Spotify for the EMS Compositions;
2. In the alternative, if the Court declines to construe the meaning of “administer” in Kobalt’s favor, as it should given the context in which the term appears, the issue of whether Kobalt breached the representation and warranty provision in Paragraph 11 of the 2016 BMLA depends, *inter alia*, upon the ambiguous meaning of the term “administer” and derivations thereof, resolution of which is a fact question reserved for a jury;
3. The ruling in the August 15 Order to proceed to a damages ruling is inconsistent with the *Limitation of Liability* provision in Paragraph 13 of the 2016 BMLA, which limits indemnification in Paragraph 12 until entry of a “final adverse judgment” *i.e.* after the

exhaustion of appellate remedies. The “damages” application of Spotify, undifferentiated in amount from its indemnification claim, should not proceed based on the foregoing until Kobalt’s appeals are exhausted on liability; and

4. In all events, Kobalt also has a right to a jury trial on Spotify’s contract damages claim, consistent with the jury demand filed with Spotify’s Third Party Complaint in this matter.

Each of these grounds also support the alternative request by Kobalt for certification of an interlocutory appeal of the August 15 Order’s denial of summary judgment to Kobalt and grant of summary judgment to Spotify on Spotify’s First, Second, and Third Causes of Action.

When Kobalt’s counsel requested an extension from Spotify’s counsel to respond to the fee application, it was mentioned that Kobalt was considering filing a request for reconsideration and motion for interlocutory appeal of the Court’s rulings against Kobalt. Kobalt’s Notice filed September 4, 2024 stated that it was going to do so. On September 5, out of an abundance of caution under Local Rule 7, Kobalt’s counsel texted and left a voicemail for Spotify’s counsel to determine its position regarding the instant motion. Spotify has not advised regarding its position.

Respectfully submitted,

s/ Robb S. Harvey

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was submitted via the Court's ECF system on September 5, 2024, which is expected to provide notice to all counsel of record, including the following:

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